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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/646,764 | 03/04/2004 | Peter Anthony Miller | | 7131 |

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EXAMINER

KUHNS, SARAH LOUISE

| ART UNIT | PAPER NUMBER |
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1761

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/646,764

Applicant(s)

MILLER, PETER ANTHONY

Examiner

Sarah L. Kuhns

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, for the reasons set forth in the previous Office Action.

Claim Rejections - 35 USC § 102

Claim 5 is rejected under 35 U.S.C. 102(e) as being anticipated by Irwin, U.S. Patent 6,207,208, for the reasons set forth in the previous Office Action.

Claim Rejections - 35 USC § 103

Claims 1-4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Molzahn et al., GB 1 571 480, or Kerr, GB 1 388 666, in view of Miller, GB 2 280 857, for the reasons set forth in the previous Office Action.

Response to Arguments

Applicant's arguments filed January 31, 2005, have been fully considered but they are not persuasive.

Applicant argues that one of ordinary skill in the art would not be led to the claimed invention by the references. However, the Examiner defines the art here to be

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liquid filtration and notes that the "hypothetical person having ordinary skill in the art' to which the claimed subject matter pertains would, of necessity have the capability of understanding the scientific and engineering principles applicable to the pertinent art." Ex parte Hiyamizu, 10 USPQ2d 1393, 1394 (Bd. Pat. App. & Inter. 1988).

Applicant also argues that there is no well known use of such band filters in the beer brewing industry. However, Miller discloses the use of these band filters in the beverage industry (bottom of page 2), which would include beer brewing. Additionally, both Kerr and Molzahn disclose the use of band filters in beer brewing. Applicant argues that the filters of Kerr and Molzahn are fundamentally unsuited for process liquid clarification duties on an industrial scale, but no evidence supporting this statement has been submitted and the claim language does not limit the process to one being conducted on an industrial scale.

In regard to Applicant's arguments concerning the heating and cooling of the mash, the claim language does not require that the process be carried out with a single mash vessel and filtering device. Therefore, the teachings of the prior art are not excluded.

Applicant asserts that Irwin is directed to a different purpose than that of claim 5. However, claim 5 is directed to a process and only requires a step of dosing of beer and/or wort with an adsorbent and Irwin teaches such a step. Therefore, it would be inherent that Applicant's result of maintaining the clarity of the wort and the beer would also be achieved in the process of Irwin.

Applicant's suggested changes to the language of claims 1-7 would help to improve the clarity of the claims. The recitation of "is dosed" is not proper because the claim is directed to the method and therefore must positively recite at least one method step. There is still no antecedent basis for the phrases "movable independent edges" and "processed liquids," and the scope of "lid-like form" remains unknown.

Applicant argues that processing grist of the order of 20-100 microns would not be a practicable possibility using the filters of the prior art depicted at 103, Figure 1. However, the Examiner did not rely on this figure in making the rejection, but rather upon the combined teachings of Molzahn, Kerr and Miller. Additionally, Applicant admits, "it is obvious that the extraction is improved the smaller the particle size of the malt."

Applicant also states that the rejection of claim 6 under 35 U.S.C. 103, as being unpatentable over Hardwick, is not supported. The Examiner respectfully disagrees. The prior art teaches the claimed process steps and therefore, would be expected to achieve the same results as the process of Applicant. The reference discloses the relationship between temperature and pressure during fermentation and therefore would motivate one of ordinary skill in the art to control them accordingly in order to achieve optimal fermentation results.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached at 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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SLK

11/9/05

H. Pratt
HELEN PRATT
PRIMARY EXAMINER